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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

In re	)	Case No. 05 CV 01114 JW
	)	MDL No. 1665
ACACIA MEDIA TECHNOLOGIES	)	
CORPORATION	)	<b>JOINT STIPULATION AND [PROPOSED]</b>
	)	<b>ORDER CORRECTING THE COURT'S</b>
	)	<b>JUDGMENT</b>
	)	
	)	
	)	
	)	

**STIPULATION**

WHEREAS, on October 23, 2009, the Court issued a Judgment (Docket Item No. 355) (“Judgment”);

WHEREAS, in the Judgment, the Court indicated its intent that the Judgment be a final judgment and be “a full and final adjudication of all issues before this Court.” (Judgment, at 2:22-23).

WHEREAS, for the Judgment to be a final judgment and be a full and final adjudication of all issues before the Court, all claims must either be adjudicated or dismissed.

WHEREAS, in this action, Defendants have plead counterclaims for non-infringement, invalidity, unenforceability, and, as to some of the Round 1 Defendants, state law issues.

WHEREAS, in the Judgment, there is no mention of Defendants’ state law counterclaims or Defendants’ unenforceability counterclaims or that such counterclaims are adjudicated or are dismissed without prejudice.

WHEREAS, in the proposed judgment filed by the parties on October 9, 2009 (Docket Item No. 353), the parties asked the Court to order that Defendants’ state law counterclaims and unenforceability counterclaims (identified broadly as “Defendants’ remaining counterclaims”) be dismissed without prejudice, stating:

“THEREFORE, IT IS HEREBY ORDERED that . . .

. . . Acacia’s state law claims, and *Defendants’ remaining counterclaims, are hereby dismissed without prejudice.*”

(Proposed Judgment, at 2:15 and 2:27-28; emphasis added).

WHEREAS, the “Third” paragraph of the Court’s Judgment dismisses some, but not all , counterclaims in the action, stating:

“Third, for the reasons set forth in the October 23 Order, with respect to Acacia’s claims for infringement and Defendants’ counterclaims for a declaration of non-infringement of U.S. Patent No. 5,253,275 (“‘275 Patent”) and with respect to Acacia’s state law claims, because Acacia has voluntarily

1                withdrawn all asserted claims of the ‘275 Patent and all state law claims, those  
2                claims are dismissed without prejudice.”  
3 (Judgment, at 2:14-18).

4                WHEREAS, the “Third” paragraph of the Judgment states that “Acacia has voluntarily  
5 withdrawn . . . all state law claims.” (Judgment, at 2:16-17).

6                WHEREAS, Acacia has not voluntarily withdrawn all state law claims.

7                WHEREAS, the “Third” paragraph of the Judgment also states that, because Acacia has  
8 voluntarily withdrawn all asserted claims of the ‘275 patent, Acacia’s claims for infringement and  
9 Defendants’ counterclaims for a declaration of non-infringement of the ‘275 are dismissed without  
10 prejudice.

11                WHEREAS, because Acacia asserted the ‘275 patent, but later granted Defendants a  
12 covenant not to sue on asserted claims 2 and 5 of the ‘275, judgment in favor of Defendants and  
13 against Acacia on Acacia’s claims for infringement and Defendants’ counterclaims for a declaration  
14 of non-infringement of the ‘275 patent is proper.

15                WHEREAS, in the proposed judgment filed by the parties on October 9, 2009 (Docket Item  
16 No. 353), the parties asked the Court to enter judgment in favor of Defendants on Acacia’s claims  
17 for infringement and Defendants’ counterclaims for a declaration of non-infringement of the ‘275  
18 patent, because Acacia has withdrawn all asserted claims of the ‘275 patent, stating:

19                        “THEREFORE, IT IS HEREBY ORDERED that . . .

20                        . . . judgment is granted to Defendants on Acacia’s claims for infringement,  
21                        and on Defendants’ counterclaims for declaration of non-infringement, of U.S.  
22                        Patent No. 5,253,275 (“‘275 patent”) because Acacia has withdrawn all  
23                        asserted claims of the ‘275 patent. . .”

24 (Proposed Judgment, at 2:15 and 2:23-27).

25                WHEREAS, the parties to this MDL Action desire to have the Court issue a corrected  
26 Judgment, that: (1) dismisses Defendants’ remaining counterclaims without prejudice, (2) does not  
27 state that Acacia voluntarily withdrew its state law claims, and (3) enters judgment in favor of  
28 Defendants and against Acacia on Acacia’s claims for infringement and on Defendants’

counterclaims for declaration of non-infringement of the '275 patent, because Acacia has voluntarily withdrawn all asserted claims of the '275 patent;

ACCORDINGLY, IT IS HEREBY STIPULATED by and between the parties through their undersigned attorneys of record that:

Subject to the approval of the Court, a corrected Judgment should be issued by the Court with the following revision to the original Judgment:

The paragraph at 2:14-18 of the Judgment should be deleted and replaced with the following paragraph:

“Third, because Acacia has voluntarily withdrawn all asserted claims of U.S. Patent No. 5,253,275 (“’275 Patent”), judgment is entered in favor of Defendants and against Acacia on Acacia’s claims for infringement and on Defendants’ counterclaims for declaration of non-infringement of the ’275 patent.

Fourth, Acacia’s state law claims and Defendants’ remaining counterclaims are dismissed without prejudice.”

IT IS SO STIPULATED.

Dated: November 3, 2009

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**ORDER**

PURSUANT TO STIPULATION, the Court shall issue a Corrected Judgment with the following revision:

The paragraph at 2:14-18 of the Judgment should be deleted and replaced with the following paragraph:

“Third, because Acacia has voluntarily withdrawn all asserted claims of U.S. Patent No. 5,253,275 (“’275 Patent”), judgment is entered in favor of Defendants and against Acacia on Acacia’s claims for infringement and on Defendants’ counterclaims for declaration of non-infringement of the ’275 patent.

Fourth, Acacia’s state law claims and Defendants’ remaining counterclaims are dismissed without prejudice.”

SO ORDERED.

DATED:

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The Honorable James Ware  
United States District Judge